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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 21 1984

DRAFT

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Superfund Delegation of Authority for
Selection of Remedy

FROM: Lee M. Thomas
Assistant Administrator

TO: Gary M. Katz, Director
Management and Organization Division (PM-213)

The purpose of this memorandum is to request that an additional Superfund delegation of authority be entered into the Agency's striped border review process. Last February, I indicated that additional authority would be considered for delegation. Based on working experience and discussions held with the Regional Administrators and Regional Waste Management Division Directors, I propose that a delegation of authority be made to the Regional Administrators for selecting remedial actions at Superfund sites for several specific kinds of remedies.

On a periodic basis, I will propose specific sites for which Regional Administrators would have full authority for remedy selection. Remedies at such sites will be consistent with the following factors:

1. Limited threat is posed by the site -- thus justifying "no action",
2. Waste lagoons and ponds cleanup,
3. Surface drums and tanks located on-site,
4. Provision of alternative water supplies; and
5. General remedial measures in which off-site contamination is limited.

Based on additional guidance being sent to the Regions for comment, OSWER would retain the authority to select remedies when certain types of site conditions exist. These factors include:

1. Area-wide or extensive off-site contamination,
2. Dioxin waste is present on-site,

3. Likely that remedy(ies) will not comply with other environmental acts, and
4. Likely that remedy(ies) will include permanent relocation of residents.

In addition, nationally significant enforcement cases, e.g. cases concerning responsible parties involved at multiple sites, could warrant the AA-OSWER retaining remedy approval authority.

Once a site has been delegated to a Region for selection of remedy, there would be required advance concurrence of the AA/OSWER when the Regional Administrator is considering Fund-balancing or a public interest waiver or noncompliance with an environmental act, which had not previously been anticipated.

OSWER and the Regions are presently working together to identify those remedial sites with operable units which are appropriate for delegation. This includes an analysis of all sites where selection of remedy is anticipated in the first and second quarters of this fiscal year. Upon completion of this analysis, we would issue the first Remedy Delegation Report (RDR) setting forth those sites where the Regional Administrator will have selection of remedy authority. The RDR will be amended periodically to add other sites, with the expectation that up to 60 percent of the anticipated FY 1985 site selection of remedy will be delegated this fiscal year.

Remaining undelegated authorities will be reviewed during the fiscal year to determine the feasibility of delegating additional selection of remedy authority to the Regional Administrators.

Attachments: Revised Delegation of Authority
Guidance on Delegation of Selection
of Remedy Authority to Regions

**THE COMPREHENSIVE ENVIRONMENTAL RESPONSE,
COMPENSATION AND LIABILITY ACT OF 1980 (CERCLA)**

14.5. Selection of Remedial Actions

1. **AUTHORITY.** Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). to determine the necessity of and to select the appropriate remedial action, except as provided in the Chapter 14 delegation entitled "Selection of Initial Remedial Measures".

2. **TO WHOM DELEGATED.** Assistant Administrator for Solid Waste and Emergency Response. [AND REGIONAL ADMINISTRATORS]

[3. **LIMITATIONS.** REGIONAL ADMINISTRATORS MAY EXERCISE THIS AUTHORITY FOR SITE WITHIN THEIR REGIONS LISTED IN THE PERIODIC REMEDY DELEGATION REPORT.]

4. **REDELEGATION AUTHORITY.** THE AA-OSWER MAY REDELEGATE THIS AUTHORITY. THE REGIONAL ADMINISTRATOR MAY NOT REDELEGATE THIS AUTHORITY.

5. **ADDITIONAL REFERENCES.**

a. Section 104(a) and 104(c) of CERCLA.

b. Section 101(24) of CERCLA.

c. National Contingency Plan (40 CFR 300.68).

[d. GUIDANCE ON DELEGATION OF SELECTION OF REMEDY AUTHORITY.]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MEMORANDUM

SUBJECT: Guidance on Delegation of Selection
of Remedy Authority to Regions

FROM: Lee M. Thomas
Assistant Administrator

TO: Director, Waste Management Division, Regions I and V
Director, Office of Emergency and Remedial Response, Region II
Director, Hazardous Waste Management Division, Region III
Director, Air and Waste Management Division, Regions IV,
VI, VII, VIII
Director, Toxics and Waste Management Division, Region IX
Director, Air and Waste Division, Region X

BACKGROUND

The purpose of this memorandum is to present our proposed procedures to implement the partial delegation of selection of remedy this fiscal year. At October and November Regional/Headquarters meetings, our staff outlined proposed procedures for the delegation of Record of Decision (ROD) approval authority to the Regional Administrators. The procedures also pertain to the Negotiation Decision Document (NDD) and the Enforcement Decision Document (EDD) for responsible party cleanups. We plan to delegate 60 percent of the FY 1985 ROD/NDD/EDDs. These procedures do not affect settlement review and concurrence for administrative and judicial actions.

The following technical factors will be used to assess whether remedy selection will be delegated:

1. Limited threat posed by site requiring no action,
2. Action to remedy waste lagoons and ponds on-site,
3. Action to remedy surface drums and surface tanks,
4. Action to provide alternative water supplies that are contaminated or threatened, and
5. Remedial action in which the off-site contamination is limited.

Four factors warrant retaining approval of the remedy by the AA-OSWER:

1. Area-wide or extensive off-site contamination,
2. Disposal or removal of dioxin wastes (until the listing regulations are developed and implemented),
3. Likely remedies will not comply with other environmental laws. Possible fund balancing or public interest waivers will be scrutinized closely, and
4. Likely remedies will require permanent relocation of residents.

In addition, nationally significant enforcement cases, e.g. cases concerning responsible parties involved at multiple sites, could warrant the AA-OSWER retaining remedy approval authority.

First and Second Quarter ROD/NDD/EDDs

Over the past three weeks, the Hazardous Site Control Division (HSCD) and CERCLA Enforcement Division (CED) have been working closely with your staff to identify those remedial sites with operable units which will be appropriate for delegation. The focus has been on those sites scheduled for ROD/NDD/EDD completion in the first and second quarters of the fiscal year (see Attachment 1). As a result of this review, it appears that the initial Remedy Delegation Report (RDR) will contain about 5-7 sites.

We are concerned that with the delegation factors listed above, it may be difficult to achieve our ROD/NDD/EDD delegation goal of 60 percent. Therefore, we need to work closely with the Regions to identify sites which fall into the AA-OSWER category (see Attachment 1) but could be shifted to the Regions if key issues were resolved prior to the public comment period. In order to identify these sites we will need additional information on each site scheduled for a ROD/NDD/EDD this fiscal year.

Procedure

We would appreciate receiving the information described in the attached Delegation Analysis Summary (Attachment 2) for the second quarter sites designated as "to be determined" for the likely selection official (see Attachment 1). This Delegation Analysis Summary focuses on four major areas:

1. Site background and threat;
2. Key remedial alternatives under consideration;
3. Issues remaining to be resolved; and
4. Evaluation of delegation recommendation.

The Delegation Analysis Summary is neither a cost-effective analysis document nor a stand alone document. It identifies issues, but does not necessarily present solutions. As a result of the submission of this analysis, we should be able to identify sites for delegation and candidate sites for issue resolution with subsequent delegation.

Generally, the Delegation Analysis Summary should be submitted after completion of the remedial investigation. However, in some cases the recommendation to delegate could be made before the remedial investigation if there is sufficient site knowledge and/or remedial planning activities are being fast tracked. Recommendations should be received by HSCD or CED and acted upon by the AA-OSWER before the feasibility study is released to the public.

Once a site remedy selection has been delegated to a Region, a previously unanticipated situation could arise where authority ordinarily would be retained by the AA-OSWER. Therefore, before selection of remedy by the Regional Administrator, advance concurrence of the AA-OSWER is required in the following cases:

- (1) When the Regional Administrator is considering Fund-balancing to initiate action;
- (2) When the Regional Administrator is considering a public interest waiver; or
- (3) When noncompliance with another environmental act will occur.

These procedures and how they relate to the existing ROD/NDD/EDD processes are illustrated in Attachments 3-1 and 3-2.

Schedule

The Agency's striped border review for this delegation of authority should begin next week. HSCD and CED will continue analyzing first and second quarter sites to identify sites that could be included in the first periodic Remedy Delegation Report (estimated mid-January). It is requested that the Regions submit the Delegation Analysis Summary for the "to be determined" second quarter sites as soon as possible, but no later than January 1, 1985.

Third and Fourth Quarter RODs

Upon completion of the analysis of possible second quarter SCAP delegations, this informal process should be continued for third and fourth quarter ROD/NDD/EDDs. Delegation Analysis Summaries should be submitted to HSCD or CED as early in the second quarter as possible.

Points Of Contact

If you have any questions concerning these procedures, please contact Bill Hanson for remedial (FTS 382-2345) and Bob Mason for enforcement (FTS 475-8235).

Attachments

cc: Regional Counsel, Regions I-X
Dan Berry, OGC
Fred Stiehl, OECM
Jim Lounsbury, OERR

ROD Status

<u>REGION</u>	<u>Quarter</u>	<u>ROD DATE</u>	<u>Likely Selection Official</u>	<u>Notes</u>
I	Nyanza, MA	3/85	RA	
I	[Western Sand, RI]	2/85	AA	
II	Bridgeport, NJ	12/84	AA	
II	[Love Canal, NY]	3/85	AA	
III	Tyson's, PA	12/84	AA	
V	Byron, IL	2/85	RA	
V	Chemdyne, OH	2/85	AA	NDD-Consent Order
VI	Crystal Chemical, TX	2/85	AA	
VII	Ellisville, MO	2/85	RA	Sites without dioxin
IX	South Tacoma, WA	9/84	AA	NDD already prepared

<u>REGION</u>	<u>Second Quarter</u>	<u>ROD DATE</u>	<u>Likely Selection Official</u>	<u>Notes</u>
I	[Charles George, MA]	3/85	RA	
I	McKin, ME	5/85	TBD (To be determined)	
II	[Burnt Fly Bog, NJ]	3/85	AA	
II	D'Imperio, NJ	3/85	TBD	
II	[Price, NJ]	3/85	AA	Likely to be NDD
II	Sinclair, NY	6/86	TBD	Not Applicable for FY'85
III	[Bruin, PA]	3/85	AA	
III	Lackawanna, PA	2/85	RA	
III	Tybouts, DE	5/85	TBD	
IV	NW 58th Street, FL	2/85	TBD	
V	Cemetery Dump, MI	6/85	TBD	
V	Charlesvoix, MI	3/85	AA	
V	Cross Bros, IL	2/85	TBD	
V	LaSalle, IL	6/85	TBD	
V	Main St Well Field, IN	2/85	RA	Likely to be IRM
VI	Motco, TX	2/85	RA	
VIII	Denver Radium, CO	3/85	TBD	
VIII	Woodbury, CO	6/85	TBD	
X	Western Processing, WA	3/85	TBD	Likely to be NDD

NDD/EDD Status

<u>REGION</u>	<u>Second Quarter</u>	<u>NDD/EDD DATE</u>	<u>Likely Selection Official</u>	<u>Notes</u>
IV	A.L. Taylor, KY	2 Qtr	TBD	
V	A & F Greenup, IL	2 Qtr	TBD	
VI	Harris Farley, TX	2 Qtr	TBD	
VII	Conservation Chem., KS	2 Qtr	TBD	

Delegation Analysis Summary

[Note Items 2-8 may be omitted if RI/FS has been submitted]

Site Name: _____

Site Location: _____

Site Classification: _____

1. Delegation Criteria

Indicate which delegation criteria are applicable to this site.

2. Site Description (include map(s), site plan(s))

Brief description of location, land user(s), surface water resources, ground water resources.

3. Current Site Status
Hazardous Compounds Present

Brief description of types and amounts of hazardous compounds present in:

- surface drums and tanks
- surface impoundment(s)
- soil
- ground water
- air
- other natural resources
- threats to water supplies

4. Risk to Receptors via Pathways

Brief description of risk due to exposure from hazardous compounds via identified pathways.

5. Operable Unit(s)

Describe if site activity will be divided into operable units.

6. Remedial Objectives and Criteria

Present remedial objectives and criteria

7. Remaining Alternatives Description

By describe alternatives remaining after the initial screening process (including no-action) in terms of specific activities, cost, public health considerations, environmental considerations, and technical considerations.

8. Recommended Alternative

Describe the proposed recommended alternatives or describe any alternate remedies which would be deemed acceptable in an NDD.

9. Consistency with other Environmental Laws

State whether the alternatives attain, exceed, or are below current regulations (and reason).

10. Enforcement

Description of past, present and expected enforcement activities, e.g. number and identity of responsible party negotiations status.

11. Community Relations

Briefly describe public's involvement and concerns.

12. Issues to be Resolved

Examples would include:

- Potential for Fund balancing
- RCRA issues, such as need to obtain alternate concentration limits (ACLs) and application to on-site disposal
- Acceptability of off-site disposal facilities
- Eligibility for funding of more restrictive State standard
- No action thresholds

13. Schedule

List milestones and dates for project implementation

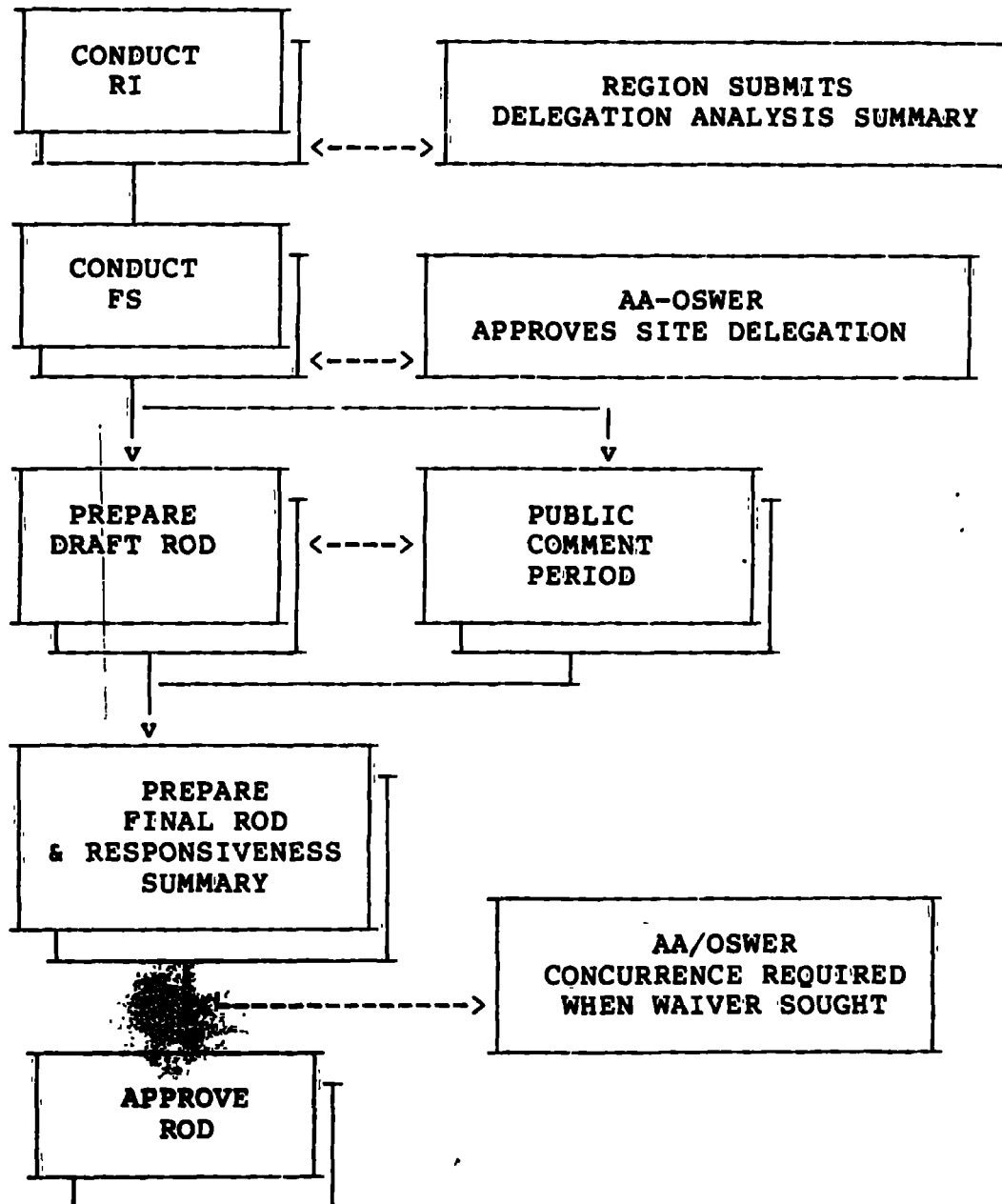
- Complete Remedial Investigation Feasibility Study
- Prepare ROD or NDD
- Approve Remedial Action (sign ROD)

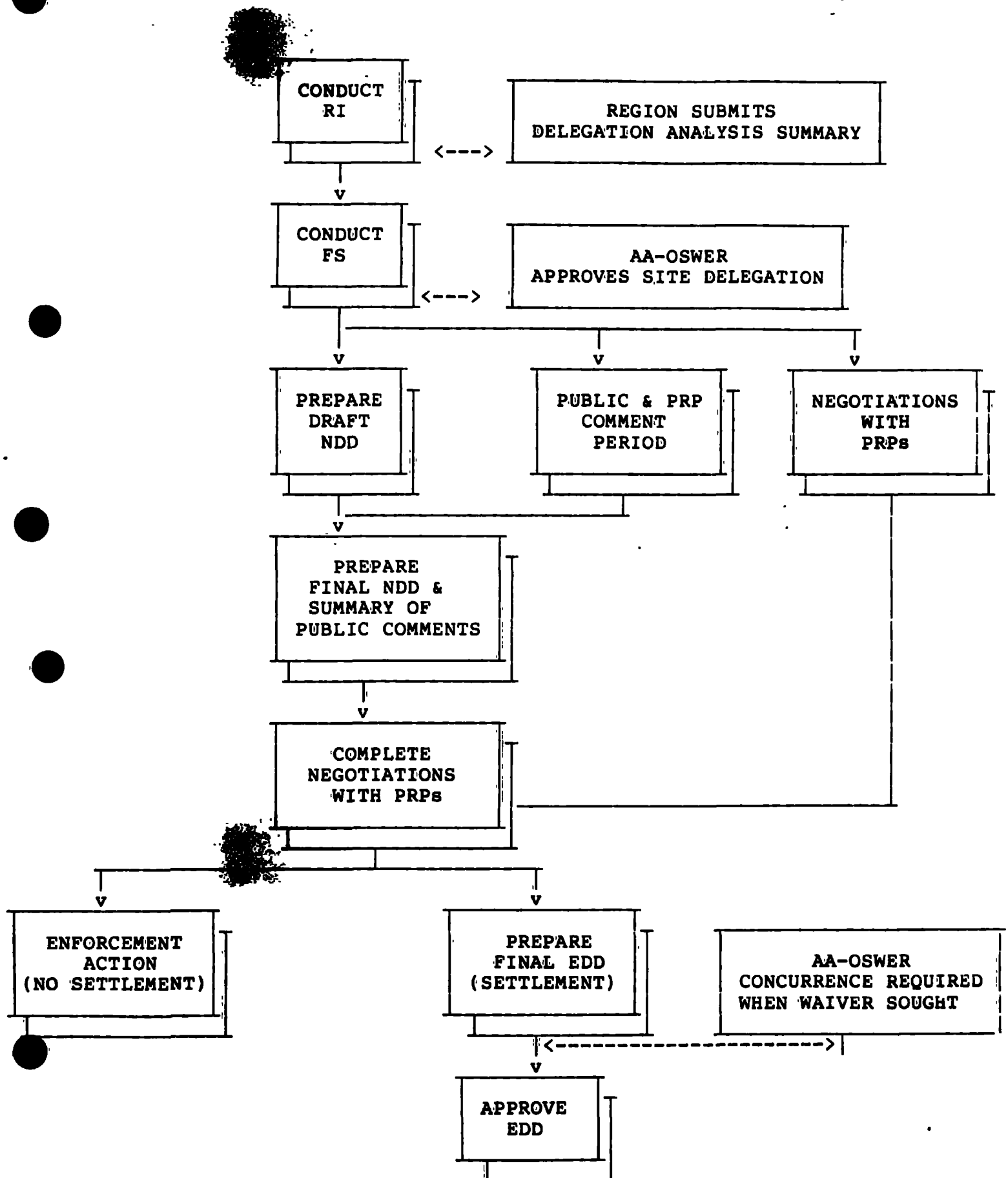
14. Future Actions

Describe future remedial activities that are required to complete site response:

- Additional RI/FS projects
- Second operable unit (i.e., for ground water migration)
- Long-term O&M to maintain effectiveness of remedy

REMEDY SELECTION PROCESS
FUND-LEAD



REMEDY SELECTION PROCESS
ENFORCEMENT-LEAD



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D C 20460

MEMORANDUM

SUBJECT: Superfund Delegation of Authority: Approving Fund-Financed and Potentially Responsible Party Remedial Actions Under CERCLA

FROM: Lee M. Thomas
Assistant Administrator

TO: Assistant Administrators
Regional Administrators
General Counsel

I am submitting a revised Superfund delegation of authority for your review and concurrence under the striped border review process. When the last Superfund delegations were circulated for your review, I stated that further delegations of authority would be considered. This delegation pertains to the approval of Fund-financed and potentially responsible party (PRP) remedial actions. Specifically, it relates to the Record of Decision (ROD) process for Fund-financed projects as well as the Negotiation Decision Document (NDD) and Enforcement Decision Document (EDD) process for enforcement lead projects.

I am recommending that authority be delegated to Regional Administrators for site specific RODs and NDD/EDDs based upon the following factors:

- a. Limited threat posed by site requiring no action;
- b. Action to remediate waste lagoons and ponds on site;
- c. Action to remediate surface drums and surface tanks;
- d. Action to provide alternative water supplies that are contaminated or threatened; and
- e. Remedial measures in which the off-site contamination is limited.

The following factors would warrant retention of the approval of the decision document by the Assistant Administrator, Office of Solid Waste and Remedial Response (AA, OSWER):

- a. Encompasses area-wide or extensive off-site contamination,
- b. Entails the disposal or removal of dioxin wastes until the listing regulations are developed and implemented,
- c. Likely will not comply with other environmental laws (including fund balancing and related public interest waivers), and
- d. Likely that remedy will include permanent relocation of residents.

In addition, nationally significant enforcement cases, e.g. cases concerning responsible parties involved at multiple sites, could warrant the AA-OSWER retaining remedy approval authority.

Once a site has been delegated to a Region for selection of remedy, there would be required advance concurrence of the AA, OSWER when the Regional Administrator is considering Fund-balancing or a public interest waiver or noncompliance with an environmental act, which had not previously been anticipated.

OSWER and Regional staff have been working together to identify those remedial sites with operable units which are appropriate for delegation. This includes an analysis of all RODs/NDDs/EDDs which were anticipated in the first and second quarters of this fiscal year. Upon completion of this analysis, we will issue the first Remedy Delegation Report (RDR) setting forth those sites where the Regional Administrator will have selection of remedy authority. The RDR will be amended periodically to add other sites, with the expectation that 60 percent of the anticipated FY 1985 RODs/NDDs/EDDs will be delegated this fiscal year.

Remaining undelegated authorities will be reviewed during the fiscal year to determine if additional delegations to the Regional Administrators should be proposed.

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Guidance on Selection of Remedy Authority
to Regions

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c. National Contingency Plan (40 CFR 300.68).

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